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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,492	12/31/2001	Mariette Ellen Boukje Bolkenbaas	BO 42433 JGD	1399

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EXAMINER	
DELCOTTO, GREGORY R	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/019,492	BOLKENBAAS ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 October 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 1-20 are pending. Applicant's arguments and amendments filed 10/21/03 have been entered.

Objections/Rejections Withdrawn

2. The following objections/rejections as set forth in the Office action mailed 5/21/03 have been withdrawn:

The rejection of claims 1-5, 7, 10-16, and 20 under 35 U.S.C. 103(a) as being unpatentable over Damhus et al (US 5,688,757) has been withdrawn.

The rejection of claims 1-5, 7-16 and 20 under 35 U.S.C. 103(a) as being unpatentable over Kunz et al (US 5,968,886) has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the

United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 10 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ehrhardt et al (US 5,877,144).

Ehrhardt et al teach inulin esters having particularly advantageous physical properties, including solubility and surface activity, that make them suitable for use in a wide variety of industrial and pharmaceutical applications. Inulin esters are synthesized having an average chain length of at least 6 and preferably 6 to 50, monosaccharide units linked together. Ehrhardt also teaches aqueous solutions and powders comprising the inulin esters as well as cosmetic preparations, body lotions, dishwashing detergents, laundry detergents, etc., containing such inulin esters. See column 2, lines 45-60 and claim 22.

In a particularly preferred embodiment, Ehrhardt et al teach inulin esters having a degree of substitution less than 1 and preferably less than or equal to 0.5. In inulin, the

degree of substitution, which is to be regarded as an average value, represents the molar ratio of fructose glucose units to alkyl substituents. See column 3, lines 55-65.

Accordingly, the broad teaching of Ehrhardt et al is anticipates the material limitaion of the instant claims.

Alternatively, even if the broad teachings of Ehrhardt et al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the partially acetylated fructan having the solubility value of the composition in order to provide the optimum surface active properties to the composition since Ehrhardt et al teach that the degree of substitution and monosaccharide units may be varied.

Note that, with respect to the product-by-process limitations as recited by instant claim 10, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Additionally, once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. In re Marosi, 710 F.2d798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983). See MPEP 2113.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrhardt et al (US 5,877,144).

Ehrhardt et al are relied upon as set forth above. However, Ehrhardt et al do not specifically teach a method of producing a partially acetylated fructan as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a partially acetylated fructan using a method of as recited by the instant claims, with a reasonable expectation of success, because the broad teaching of Erhardt et al suggest a method of formulating a partially acetylated fructan as recited by the instant claims.

Claims 1-7 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrhardt et al (US 5,877,144) in view of Damhus et al (5,688,757).

Ehrhardt et al are relied upon as set forth above. However, Ehhardt et al does not specifically teach the use of a bleaching agent as recited by the instant claim.

Damhus et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a bleaching agent in the detergent compositions taught by Ehrhardt et al, with a reasonable expectation of success, because Damhus et al teach the use of bleaching agents in combination with sugar derivatives in a variety of detergent compositions including laundry compositions and Ehrhardt et al teach the formulation of a variety of detergent compositions including laundry detergent

compositions. Furthermore, bleaching agents are conventional laundry detergent components.

Response to Arguments

With respect to Ehrhardt et al, Applicant states that Ehrhardt et al fail to anticipate or render obvious the claimed invention and that Applicants believe that Ehrhart et al fail to disclose acetylated or propionylated fructans having a solubility as set forth in claim 10. Furthermore, Applicant states that the Examiner's attention is directed to current Example 9 and comparative Example D and that these Examples demonstrate the differences between the claimed method and the method disclosed by Ehrhardt et al. In response, note that, the Examiner sees no distinction between the fructan of Ehhardt et al and that of the instant claims. Note that, Ehrhardt et al teach the preferred fructan (inulin) having the same degree of substitution as recited by the instant claims. Additionally, Applicant has provided no reasoning or evidence showing that the fructan as produced by Ehrhardt et al is different from the fructans of the prior art. Only claims 8-10 require that the fructan is produced in a certain way; all other claims simply define the fructan by a degree of substitution which is taught by Ehrhardt et al. Furthermore, Applicant points to example 9 of the instant specification in the response but the Examiner finds no mention of example 9 in the specification.

Note that, with respect to the combination of Ehrhardt and Damhus et al, Applicant states that it is only with hindsight that one would combine the teachings together. In response, note that, the Examiner maintains that there is clear motivation to combine the teachings of Ehrhardt et al and Damhus. Note that, Damhus et al is a

secondary reference relied upon for its teaching of a bleaching agent as a convention laundry detergent ingredient.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
January 12, 2004